

DEPARTMENT OF ENVIRONMENTAL PROTECTION COMPLIANCE AND ENFORCEMENT

Notice of Pilot Program for On-Site Multi-Media Compliance Assistance for Small Business and Local Government Entities

Take Notice that the Department of Environmental Protection (Department) is establishing a voluntary pilot program to help small business and local government entities comply with their environmental regulatory requirements, on a multi-media basis, and to foster pollution prevention strategies in appropriate cases. Under this program, at the request of a small business or local government entity, one or more appropriately trained compliance inspectors will provide on-site compliance assistance to help the entity understand and comply with the State's hazardous waste management, air and water pollution control and release prevention regulations. This pilot program will begin on September 16, 1996 and end on February 28, 1997. The Department will conduct a public meeting on September 9, 1996 for all interested persons to discuss and answer questions regarding this pilot program. In March 1997, upon the completion of the initial pilot, the Department will either extend the pilot program, or establish the program as a permanent function within the compliance and enforcement organization. In either case, the Department anticipates making appropriate adjustments and improvements to the program based upon the experience gained during the initial pilot.

Background and Purpose

Currently, in the course of performing periodic compliance inspections and other routine functions, Department inspectors provide assistance to regulated entities, including small business and local government entities, on an informal basis. In addition, the hazardous waste and NJPDES compliance and enforcement programs currently administer outreach and education initiatives targeted to new hazardous waste generators and new NJPDES permittees respectively. The department believes that these efforts help prevent violations and improve compliance; expanding these efforts will lead to further improvements in compliance and greater protection of human health and natural resources. The Department is therefore developing a more broad based, voluntary compliance assistance program, as further described below, similar in nature and scope to the consultation services provided by the New Jersey Department of Labor to employers regarding occupational safety and health requirements. Through this pilot program, compliance inspectors will work in a problem solving fashion with small business and local government entities who request assistance to help them understand and satisfy their environmental compliance obligations. This pilot program is intended to improve compliance on a multi-media basis among small business and local government entities who may possess a strong commitment to compliance, but limited environmental expertise and financial resources.

Description of On-Site Multi-Media Compliance Assistance Program.

Eligibility/Applications. Under the pilot program, at the request of a small business or local government entity, the Department will provide on-site compliance assistance in connection with the following: (1) the air pollution control requirements for stationary sources, (2) the hazardous waste management (RCRA) requirements for transporters, generators and TSDFs, (3) the water

pollution control requirements for point source discharges, including stormwater discharges subject to regulation under the NJPDES General Permit for stormwater, (4) the Discharge Prevention Containment and Countermeasure (DPCC) program requirements, (5) the Toxic Catastrophe Prevention Act (TCPA), and (6) the New Jersey Worker and Community Right To Know program.

For the purpose of the pilot project, a small business is defined as an entity with less than 100 employees company-wide, and a local government entity is defined as any political subdivision of the State or instrumentality thereof that provides one or more services to a population of 10,000 persons or less. However, the department may, in its discretion, determine on a case-by-case basis, to provide on-site compliance assistance to a small business entity with greater than 100 employees or a local government entity that services greater than 10,000 persons, provided the entity is seeking on-site compliance assistance for a new or substantially modified regulatory requirement. If a small business or local government entity requests assistance in a subject area that is not included within the scope of this pilot program (i.e. radiation protection requirements), the Department will, after consultation with and the consent of the applicant, refer the matter to the appropriate program staff within the Department for response and follow up. The on-site compliance assistance provided under this program will be available to a regulated entity not more than once every five years.

To request on-site compliance assistance, a small business or local government entity must complete and submit an application form provided by the Department. The application seeks information, including but not limited to the following: the name, street address and telephone number of the entity, the name of the individual responsible for environmental compliance, a description of the activities occurring on-site, the program areas or specific regulatory requirements for which on-site compliance assistance is sought, and the number of persons employed full time by the small business entity or the population served by the local government entity, as applicable. Application forms and information about the pilot program may be obtained from the Department in the manner described below, and through the Department's on-line bulletin board by calling (609) 292-2006, and the internet at www.state.nj.us. The Department is also making information and application forms available through county health departments, state and local business trade associations, the New Jersey Department of Labor, the Small Business Ombudsman in the New Jersey Department of Commerce and Economic Development, and the Office of the Business Ombudsman in the Department of State. The Department will accept applications for on-site compliance assistance under this pilot program beginning on September 16, 1996 through February 28, 1997. Applications received postmarked after this date will be retained on file by the Department. In March 1997, at the conclusion of the pilot period, the Department will evaluate the need for program modifications and improvements and make changes accordingly. The Department then plans to extend the pilot period or establish a permanent program within the Department. At that time, the Department will notify persons who submitted applications after the deadline and publicly announce its determination.

Prioritizing and Referring Matters to Existing Programs. The Department anticipates providing on-site compliance assistance to each small business and local government entity that submits an application during the pilot period. However, since this program is new, the Department is not able to predict with any certainty how many small business and local government entities will seek assistance, and the total amount of staff time that will be required to implement this program. Accordingly, the Department may, in its discretion, prioritize the requests for assistance based upon

the potential impact of a small business or local government entity upon human health, safety or the environment, including any potential noncompliance, the specific type of assistance sought, the availability of Department resources, and any other considerations the Department determines to be relevant. Also, upon review of an application, if the Department determines that complete and timely assistance is available through an existing assistance program within the Department which is better suited to address the particular compliance issue or problem described in the application, the Department may, in its discretion, after consultation with the applicant, decline to provide on-site compliance assistance under this pilot project and refer the matter to the appropriate program within the Department for assistance. For example, if an applicant seeks assistance only in obtaining a permit or completing a permit application, the applicant would be referred to the Office of Permit Information and Assistance. The Department will not provide on-site compliance assistance under this pilot project in connection with any matter that is the subject of an ongoing investigation or pending enforcement action. However, for any violation that is the subject of a pending enforcement action, the Department will provide assistance in correcting the violation and improving compliance through the existing permitting and compliance programs.

Nature and Scope of On-Site Compliance Evaluation. Upon receipt of a completed application, the Department will schedule a pre-site evaluation conference, which will be conducted at the location of the small business or local government entity at the beginning of the on-site compliance evaluation, or, in the Department's discretion, prior to the site visit by telephone or in person. The purpose of the pre-site evaluation conference is to review the application, the compliance history of the applicant, the nature and scope of the on-site compliance evaluation and assistance to be provided, the Department's enforcement response policy for violations revealed or observed during on-site compliance assistance, and to answer questions about the program.

Upon receipt of an application for on-site compliance assistance the Department will assign one or more inspectors to perform an on-site compliance evaluation. During the performance of an on-site compliance evaluation, one or more appropriately trained and knowledgeable Department inspectors, using a multi-media checklist/questionnaire, will review with appropriate facility personnel: the regulatory requirements applicable or potentially applicable to the small business or local government entity and its facility; the facility's operations and environmental management practices; any actual or potential violations observed or revealed, including those involving regulatory requirements or media areas for which assistance was not specifically requested; the specific or general steps the facility must take to correct any violations; and practices or procedures for preventing noncompliance. In some cases, a small business or local government entity may have several technologies or strategies for maintaining compliance or correcting a violation from which to choose. The Department inspector will help a regulated entity identify options, but will not recommend specific options or vendors of control equipment or professional services. In all cases, the small business or local government entity remains solely responsible for compliance with all applicable regulatory requirements. Whenever possible, in the course of helping small business or local government entities identify options for improving compliance or correcting violations, Department inspectors will identify and promote pollution prevention strategies for achieving or improving compliance.

Before concluding the on-site compliance evaluation, the inspector(s) will discuss with appropriate facility staff any actual violations revealed or observed during the visit, the period of

time within which each violation must be corrected. Within 30 days of the visit, the Department will provide a written report setting forth the findings of the on-site compliance evaluation. A follow-up visit may be performed to verify that any violations identified during the on-site compliance evaluation have been corrected. In some cases, the Department inspector may observe a violation in a subject area for which compliance assistance was not requested. In such cases, the Department inspector will identify the violation during the closing conference and in the written report, and the regulated entity will be required to correct the violation within a prescribed correction period.

Enforcement Response Policy. Pursuant to the exercise of its traditional statutory and judicially recognized enforcement discretion, the Department has established an interim enforcement response policy for violations observed or revealed through on-site compliance assistance provided by the Department in accordance with this pilot program. This enforcement response policy is generally consistent with the policy adopted by the United States Environmental Protection Agency (USEPA) in its Small Business Compliance Incentives Final Policy effective June 10, 1996. Under this enforcement response policy, the Department shall waive the assessment of penalties for any violation observed or revealed through on-site compliance assistance, provided the following conditions are satisfied: (1) the violation is fully corrected within the period of time prescribed by the Department, which shall not exceed 180 days, or 365 days if the small business or local government entity is correcting the violation through the implementation of pollution prevention measures; and (2) any continuing violation or condition or activity that presents an imminent or substantial risk to human health, safety or natural resources is remedied immediately. For any violation that the Department determines will not be corrected within 90 days, the Department may, in its discretion, require a small business or local government entity to submit a compliance schedule or execute an enforceable agreement setting forth a compliance schedule with appropriate milestones for correcting the violation and achieving compliance.

This enforcement response policy shall apply to any violation voluntarily disclosed in an application seeking on-site compliance assistance under this pilot program, or revealed or observed during the on-site compliance evaluation performed under this pilot program, except this enforcement response policy shall not apply to any violation which: (1) involves purposeful, knowing, reckless or criminally negligent conduct; or (2) results in serious actual harm, or presents an imminent and substantial endangerment to human health, safety or natural resources; or (3) is required by statute, regulation, permit, or order to be reported to the Department, such as information contained in Discharge Monitoring Reports or Excess Emission Reports; or (4) is a repeat offense, i.e. the Department has issued a warning letter, notice of violation, administrative order or other enforcement document regarding the same or closely related violation within the preceding 24 month period; or (5) or any violation for which N.J.S.A. 58:10A-10.1 prescribes the assessment of a mandatory administrative penalty. This enforcement response policy is applicable only to the Department, and shall govern only the Department's exercise of enforcement discretion; this policy is not applicable and does not bind the USEPA or any other agency or third party authorized to enforce the environmental laws of the state.

Requesting on-site compliance assistance shall not prevent or delay the scheduling of a periodic compliance inspection, and shall not stay any compliance obligations. However, upon the completion of an on-site compliance evaluation, and the correction of any violations discovered during the evaluation, the Department may, in its discretion, delay or suspend the next scheduled

compliance inspection for any media area or program for which compliance assistance was provided.

Relationship to Other DEP Sponsored Compliance Assistance Programs. This pilot program is not intended to supersede, supplant or modify any existing programs or practices implemented by the Department through which compliance assistance, including on-site assistance, is provided. Rather, this pilot program is intended to supplement those existing efforts. In certain cases, the Department may refer a small business or local government entity to another program within the Department for assistance either as an alternative to on-site compliance assistance under this pilot program, or for additional assistance. For example, the Small Business Assistance Program in the Office of Permit Information and Assistance, and the Technical Assistance Program located at the New Jersey Institute of Technology, provide assistance to regulated entities.

To Request On-Site Compliance Assistance

To obtain more information about this program or obtain application forms to request on-site compliance assistance, contact Mary Siller or David Rosenblatt at (609) 984-3285, or

Department of Environmental Protection
Compliance and Enforcement
401 East State Street
CN 422
Trenton, New Jersey 08625-0422
Attention: On-Site Compliance Assistance Program

Public Meeting on the On Site Compliance Assistance Pilot Program

The Department will conduct a public meeting to discuss and answer questions regarding the on site compliance assistance pilot program at 1:00pm on Monday, September 9, 1996 at:

Department of Personnel
Merit System Board Room, First Floor
44 South Clinton Avenue
Trenton, New Jersey

DATE

Marlen Dooley, Assistant Commissioner
Compliance and Enforcement